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No. 03-1506

In the Supreme Court of the United States

TONYA WILLIAMS,

Petitioner,

v.

COLUMBUS METROPOLITAN HOUSING AUTHORITY,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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LAW AND ARGUMENT FOR DENYING THE PETITION

I. Review Is Not Warranted Because The Sixth Circuit's Decision Does Not Conflict With This Court's Decision In *Reeves v. Sanderson Plumbing*, 530 U.S. 133 (2000).

In *Reeves v. Sanderson Plumbing*, 530 U.S. 133 (2000), this Court considered the level of proof a Title VII plaintiff must put forth to avoid judgment as a matter of law. This Court held that under the burden-shifting analysis of *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973), after a plaintiff presents evidence of a prima facie case and the employer has proffered a legitimate, nondiscriminatory basis for the employment decision, the plaintiff must also present evidence from which a rational fact finder could conclude that the employer's proffered explanation was false in order to survive a motion for judgment as a matter of law. *Reeves v. Sanderson Plumbing,* 530 U.S. 133, 154 (2000) (Ginsburg, J., concurring). This Court resolved the split in the Circuits as to whether a demonstration of pretext was sufficient, or whether proof of pretext plus discrimination – the so-called "pretext-plus" standard – was required. In rejecting the pretext-plus standard as the general rule, this Court reasoned that "it is permissible for the trier of fact to infer the ultimate fact of discrimination from the falsity of the employer's explanation." *Reeves*, 530 U.S. at 146. Stated another way, in "appropriate circumstances," the jury "can reasonably infer from the falsity of the explanation that the employer is dissembling to cover up a discriminatory purpose." *Id.*

Applying the Fed.R.Civ.P. 56 standard to the *Reeves* holding, in order for a Title VII plaintiff's claim to survive

summary judgment, the plaintiff must first establish evidence of a prima facie case, and following the employer's proffer of a legitimate, nondiscriminatory basis for the employment decision, the plaintiff must raise a genuine issue of material fact as to the credibility of the proffered reason, such that a trial is necessary to determine if the explanation was merely a pretext for unlawful discrimination.

A plaintiff can establish a question of fact on pretext by providing to the court evidence that suggests the employer's claimed basis for the decision is "unworthy of credence." *Reeves,* 530 U.S. at 143. The key to the *Reeves* and *McDonnell Douglas* analysis is that the evidence presented in an attempt to demonstrate pretext must *at least relate to and call into question* the employer's proffered explanation.

Petitioner Tonya Williams argues that review is warranted because the Court of Appeals for the Sixth Circuit "refused to consider" facts "tending to show" that Respondent Columbus Metropolitan Housing Authority's ("CMHA") basis for the employment decision was "not worthy of belief," thus running afoul of *Reeves*. (Petition, 8.) However, Petitioner did not produce any evidence that creates a genuine issue of material fact on CMHA's proffered basis for the employment decision. CMHA's proffered justification for not promoting Ms. Williams is that she had little or no experience in the fields of security, crime prevention, safety, or investigation and that CMHA chose to continue to search for the "most qualified candidate." (Pet. App. 3a.) CMHA's proffered justification is supported by significant and unchallenged evidence.

A. The Position

CMHA employs its own security and crime prevention personnel to serve in the various housing communities CMHA operates and manages in Franklin County, Ohio. The person in charge of CMHA's Safety and Crime Prevention Department is the Manager of Safety and Crime Prevention ("SCP Manager"). The SCP Manager coordinates all crime prevention and safety programs throughout CMHA; supervises CMHA's security personnel, contractual police officers, and additional private security officers, as well as its three Crime Prevention Coordinators; coordinates the investigation into criminal activity on CMHA's properties; and maintains working relationships with the local law enforcement agencies in order to coordinate and implement crime prevention and safety efforts. (J.A. 201, 205.)

CMHA posted a notice of the opening in its offices, and it also advertised the position in the local newspaper, the *Columbus Dispatch*. (J.A. 161-162, 166, 201.) Through the internal job posting and the outside advertisement, CMHA explained that the successful candidate would have, among other things, a college degree (with a non-mandatory preference for a major in Criminal Justice); knowledge of investigative, legal and safety procedures; 7-10 years of experience in the safety/investigative field; and prior supervisory experience. Petitioner acknowledges that the job posting and the job description accurately summarize the requirements for the position. (J.A. 161-62, 166, 184.)

Ms. WIlliams was one of 32 applicants for the position, 3 of whom were female. (Pet. App. 3a.) Based on her application, CMHA decided not to interview Ms. Williams for the position. CMHA stated in a letter to Ms. Williams that it was going to "continue [its] search for the *most*

qualified candidate." (Pet. App. 3a, emphasis supplied.)

B. Ms. Williams's Background, In Her Own Words

Prior to working at CMHA, Ms. Williams worked with a youth program where she "helped get the toys and pass out free lunches to the children"; and she also worked in an automobile factory where she would "assemble parts for air conditioners." (J.A. 132-34.)

During the time that she has worked with CMHA, she has also worked in two outside jobs. In one she "stapled tags to clothing [and] packed them," and in the other she worked as a rehabilitation specialist "preparing food, taking the clients out on outings [and] making sure they were bathed and clean, [and] clothed...." (J.A. 135-36.)

While working at CMHA, Ms. Williams has *never* held a position in which her primary responsibility was security, crime prevention, safety, or investigation of criminal activity. During her first five years with CMHA (from 1978 to 1983), she primarily inspected apartments, and then as a Management Clerk she primarily collected rent, inspected apartments, issued eviction notices, and ensured that tenant maintenance orders and complaints were addressed. She became a Housing Manager for CMHA in 1983, during which time she inspected buildings, acted as a liaison between CMHA and the residents, collected rent, etc. (J.A. 146, 211.)

Just two years before applying to be the SCP Manager, Ms. Williams became a Property Manager for CMHA, which is her current position. As she explains it, with this new role she "basically took on the responsibility of managing maintenance staff, tracking work orders." Significantly, Ms.

Williams admits that nothing in her job description provides that she is primarily responsible for criminal investigations, crime prevention, security, or safety. (J.A. 155-58, 191, 208.)

Finally, Ms. Williams' education is similarly devoid of training in security, investigations, safety, and crime prevention. Over the course of 22 years (from 1976 to 1998), Ms. Williams took courses off and on at The Ohio State University. Ms. Williams initially sought a major in education, but ultimately majored in political science and sociology. She eventually received her degree on September 3, 1998, graduating with a low grade point average of "probably about 2.0." She received this college degree just 5 days before she applied for the SCP Manager position. She admits she has *no* educational or training certificates in security, crime prevention, safety, or investigative techniques. (J.A. 125, 127-31, 139-40, 169.)

Stated succinctly, Ms. Williams testimony is that she has *never* supervised security personnel; she has absolutely *no training* to serve as a security supervisor; she has *never* served as a security guard and has *no training* as a security guard; she has *never* worked as a private investigator; she has *no training* as a private investigator; she has *no training* in surveillance; she has *no training* in private investigations; she has *never* trained others on how to conduct private investigations; she has *never* developed or implemented a training manual for security staff; she has *never* been part of any type of police force; and she has *never* held a job in which her primary responsibility was to prepare and compile reports on criminal activity. (J.A. 188, 191, 199-200.)

C. The Selected Candidate

In stark contrast to Petitioner's background, the candidate CMHA selected for the SCP Manager position had more than 17 years of training and experience in the areas of security, investigation, safety, and crime prevention. First, Mr. Robert Walker served in the U.S. Army as member of the Military Police from 1981-1988. He received extensive and specialized training to be a member of the Military Police, and as an officer, Mr. Walker performed duties similar to those of a civilian law enforcement patrol officer. He was directly involved in responding to and investigating criminal activities. (J.A. 223-225.)

Following his seven years as a member of the Military Police, Mr. Walker worked for one year as a private investigator with Pinkerton, Inc., during which he performed numerous undercover operations. (J.A. 221-222, 240.)

In 1990, Mr. Walker began his work with Faith Mission, Inc., a homeless shelter in Columbus, Ohio for more than 200 individuals. Mr. Walker's first position with Faith Mission was Security Supervisor, during which time he was called upon to "investigate employee complaints, employee theft, resident complaints, to establish security procedures for [the security staff], collect donations, and ensure that [the] properties were secure by making periodic security checks." (J.A. 220.)

Mr. Walker was promoted to Assistant Director of Men's Services for Faith Mission, and then to Director of Men's Services. In these positions, Mr. Walker's primary responsibility was security and crime prevention matters. (J.A. 215, 220, 240.)

Over the course of his employment with Faith Mission, Mr. Walker implemented a series of security-related and crime prevention measures, including a procedure for collection of weapons, and he developed a resident services department, which was a crime prevention liaison between the security personnel and the residents. Significantly, Mr. Walker personally prepared and implemented a complete security manual for the Faith Mission staff to follow. Mr. Walker also conducted hundreds of investigations of allegations of criminal activity and rule violations of both staff and residents at the shelter. Mr. Walker's programs were highly successful: his efforts substantially reduced violent acts and criminal activity among the residents at the shelter. (J.A. 216, 218, 234, 236, 240.)

Based upon Mr. Walker's superior credentials, and based upon the fact that he was most qualified for the position as compared to all of the other candidates CMHA considered – both male and female – CMHA offered the SCP Manager position to Mr. Walker. (J.A. 110, 112, 116, 258, 282.)

D. Lack Of Evidence That CMHA's Stated Basis Is False.

Ms. Williams is unable to provide any evidence that CMHA's stated reasons for the decision are, in fact, "unworthy of credence." Although she did not explain her arguments in her Petition, Ms. Williams has at various times raised the following arguments in an attempt to create a factual issue of pretext:

1. She was qualified for the position.

2. CMHA failed to follow its own internal interviewing and hiring procedures;

3. There were inconsistencies in the deposition testimony of various CMHA employees;

4. CMHA's employees contradicted their deposition testimony in affidavits.

5. CMHA could not have compared her resume with the selected candidate because he was not a candidate when she was "rejected."

(Petition, 8.)

Petitioner's claims miss the point, legally and factually. Both lower courts considered and rejected as untrue and unsupported Petitioner's claimed evidence of pretext – and both courts noted that even if there was evidence to support her arguments, the arguments were nonetheless not probative of whether CMHA's proffered reasons for not promoting Ms. Williams were, in fact, pretext for discrimination. Stated another way, there is no evidence to support her claims, but even if there was such evidence, the arguments do not call into question CMHA stated basis.

1. Whether Ms. Williams meets the minimum requirements

Whether or not Ms. Williams met the minimum requirements for the position is not relevant to proving pretext. CMHA believes – and has contended to the lower courts – that Ms. Williams did not meet the minimum qualifications for the position and thus cannot make out a prima facie case. Both lower courts skipped over whether she was minimally qualified because it was so clear that Ms. Williams had no evidence to create a factual issue as to the veracity of CMHA's proffered, legitimate, nondiscriminatory

basis for the decision. (Pet. App. 6a.) But even assuming that Ms. Williams met the minimum qualifications and could meet the requirements of the prima facie standard, that in no way helps her establish that CMHA's proffered basis for the decision was unworthy of belief. Stated another way, that Ms. Williams was minimally qualified for the position like a host of other applicants does nothing to call into question CMHA's decision – stated to her in writing at the time she was turned down for the position and reiterated to this day – that CMHA desired to hire the person "most qualified" for the position. As the Sixth Circuit stated:

> That Williams met the minimum qualifications of the job for the purpose of establishing a prima facie Title VII case does not necessarily preclude CMHA from addressing the shortcomings in Williams's qualifications in asserting its legitimate, nondiscriminatory rationale.

(Pet. App. 10a.)

2. CMHA's policies

There is no evidence to support Ms. Williams' claim that CMHA did not follow its internal policies. Ms. Williams argues that Mr. Walker's hiring violates CMHA's anti-nepotism policy because Mr. Walker's wife is also an employee of CMHA. As the Sixth Circuit noted, "Williams presents no evidence Walker's hiring would even violate CMHA's anti-nepotism policy." (Pet. App. 12a.) Rather, the anti-nepotism policy "only prohibits employing an individual in a position where he or she would report directly to a relative." (Pet. App. 12a.) Because there is no evidence that one of the Walkers reported to the other, Ms. Williams has no evidence that CMHA did not follow its "internal

interviewing and hiring policies." Thus, the fact that Mr. Walker's wife is also an employee of CMHA is of no moment, and does nothing to help Ms. Williams' create a factual issue on CMHA's contention that Mr. Walker was the most qualified candidate.

3. Inconsistent deposition testimony

Ms. Williams seeks to create a question of fact as to pretext by pointing to meaningless differences in the memories of CMHA's witnesses – concerning matters of process unrelated to the decision not to promote Ms. Williams. The varying accounts from the members of the interviewing committee as to who was interviewed, when the interviews occurred, who was present, etc., do not indicate "dishonesty or bad faith." (Pet. App. 13a.) Rather, as the Sixth Circuit correctly noted, "At best, such inconsistencies evidence a lack of organization and/or fuzzy memories." (Pet. App. 13a.) The Sixth Circuit summarized Ms. Williams accusations:

> Although one can reasonably infer pretext from an employer's inconsistent explanations for a challenged employment decision, *see Appelbaum v. Milwaukee Metro. Sewerage Dist.*, 340 F.3d 573, 579 (7th Cir. 2003), the inconsistencies cited by Williams relate entirely to matters of process and have no bearing on CMHA's reasons for not promoting Williams.

(Pet. App. 13a.)

4. Affidavits did not contradict deposition testimony

Ms. Williams claims that two CMHA employees, Robert Thomas and Karen Perkins, stated that Ms. Williams was qualified for the position and should have been interviewed, but later contradicted those statements in affidavits. There is no support for this argument. Rather, Mr. Roberts stated in his deposition that he recalled having mentioned to someone that he preferred that all internal applicants receive an interview. And Ms. Perkins merely stated that, as she sat in her deposition, she had no recollection of whether Ms. Williams had met the minimum qualifications for the position. Mr. Thomas and Ms. Perkins did not contradict their deposition testimony when they later opined that Ms. Williams did not meet the minimum qualifications for the position. (Pet. App. 14a.)

Even if Mr. Thomas and Ms. Perkins had contradicted their prior testimony when they stated that did not believe Ms. Williams met the minimum qualifications for the position, that fact would not help establish the falsity of CMHA's stated basis – that Ms. Williams was not promoted because CMHA sought to continue its search for the "most qualified candidate."

5. Ms. Williams was not the most qualified applicant

Ms. Williams' argument that her application could not have been compared to that of the selected candidate is not logical. CMHA stated in its letter to Ms. Williams informing her that she was not selected for the position that it wanted to "continue [its] search for the *most* qualified candidate." (Pet. App. 3a, emphasis supplied.) Mr. Walker did not have to be

a candidate in order for it to be clear that Ms. Williams was not the most qualified candidate. Indeed, there were a host of candidates more qualified than her – and the most qualified of those received interviews. (Pet. App. 3a.) As the Sixth Circuit stated:

> CMHA could have reasonably concluded . . . [that Ms. Williams] fell short of what it was looking for to fill the position of SCP Manager, even without seeing the application of the individual who was eventually hired.

(Pet. App. 12a.)

6. *Even if all of Ms. Williams' arguments were supportable, summary judgment was still properly granted pursuant to* Reeves.

Even if there was evidence to support Ms. Williams' arguments – which there is not – and even if that evidence were considered potentially probative of pretext, the Sixth Circuit *still* properly granted summary judgment. In *Reeves,* this Court held that "[the employer would be entitled to judgment as a matter of law] if the plaintiff created only a weak issue of fact as to whether the employer's reason was untrue and there was abundant and uncontroverted evidence that no discrimination had occurred." *Reeves*, 530 U.S. at 148. This Court went on to discuss some of the factors to be considered in determining a motion for judgment as a matter of law: "Those include the strength of the plaintiff's prima facie case, the probative value of the proof that the employer's explanation is false, and any other evidence that supports the employer's case and that may be properly considered on a motion for judgment as a matter of law." *Reeves,* 530 U.S. at 148-149.

In the present case the Sixth Circuit analyzed all of the factors set forth in *Reeves,* and found that the plaintiff had a very weak prima facie case. Indeed, the Sixth Circuit determined that even under her own "interpretation of her work experience," Ms. Williams "barely meets the minimum qualifications articulated by CMHA." (Pet. App. 9a.) And, CMHA did not eventually hire someone who was even closely situated to Ms. Williams; it eventually hired the most qualified candidate, whose 17 years of experience in crime prevention and safety program coordination made him an ideal candidate. Ms. Williams could not point to any statements or actions which demonstrated the decision not to promote her was based upon anything more than the reasons given. In fact, when asked what it was that made her believe she was not promoted because of her gender, Ms. Williams did not point to any facts. Instead, she simply replied it that it was a "gut feeling." (J.A. 178.)

Since Ms. Williams did not meet her burden of demonstrating a factual issue on pretext under *McDonnell Douglas* and its progeny, CMHA was entitled to summary judgment, and the Sixth Circuit's decision affirming summary judgment did not run afoul of *Reeves*. As a result, this case does not warrant review by this Court.

II. Review Is Not Warranted Because The Sixth Circuit's Decision In This Case Does Not Conflict With Decisions of The Tenth Circuit.

Since this Court announced the shifting-burden rubric in *McDonnell Douglas,* each Circuit Court has described the various types of evidence a plaintiff can use to demonstrate that there is a factual issue on pretext. While the Circuits have not all used identical language, they have all put forth

descriptions of the types of things that call into question an employer's proffered basis.

Petitioner argues that the Sixth Circuit's decision prohibits lower courts from considering the weaknesses, implausibilities, inconsistencies, incoherencies or contradictions in the employer's proffered basis for the employment decision. (Petition, 9.) For her contention, Petitioner cites no language of the Sixth Circuit's decision in this case or in any other case that suggests such a prohibition.

Contrary to Petitioner's contention, both the Sixth and Tenth Circuits – like all of the Circuits – consider any evidence so long as it is directly related to the employment action in dispute. In the Tenth Circuit case Petitioner cites, for example, the alleged inconsistencies relate directly to the employer's proffered basis for the employment decision. In *EEOC v. Horizon/CMS Healthcare*, 220 F.3d 1184 (10th Cir. 2000), the employer's proffered rationale for not granting light-duty work to a pregnant plaintiff was that it did not allow light duty for any employee injured off the premises because its rule was more cost-effective than allowing light duty for a wider range of needs. Plaintiff demonstrated there was no factual support for the company's claim. That is, the company's statement was inconsistent with reality. Because the inconsistencies *related directly* to the employer's proffered legitimate non-discriminatory basis for the decision, a question of fact existed as to pretext, and trial was appropriate. *Id.* at 1200.

Likewise, the Sixth Circuit has for at least a decade made clear that it will consider evidence that brings into question the employer's proffered basis. In *Manzer v. Diamond Shamrock Chemicals Co.*, 29 F.3d 1078 (6th Cir. 1994), the Sixth Circuit held that a plaintiff can rebut an employer's

proffered legitimate non-discriminatory basis for an employment decision by presenting evidence that:

1. the proffered reason had no basis in fact;

2. that the proffered reasons did not actually motivate the decision; or

3. that the proffered reasons were insufficient to motivate decision.

Manzer, 29 F.3d at 1084. In addition to making clear that a plaintiff can rebut an employer's proffered non-discriminatory basis by setting forth evidence in these broad categories, the Sixth Circuit has also instructed lower courts to "review all of the facts together not in isolation." *Thurman v. Yellow Freight,* 90 F.3d 1160, 1166 (6th Cir. 1996) *amend.*, 97 F.3d 833 (6th Cir. 1996) ("an employer's changing rationale for making an adverse employment decision can be evidence of pretext.") And, lower courts within the Sixth Circuit have followed the Sixth Circuit's instructions. For instance, in *Herbst v. System One Information Management,* 31 F.Supp.2d 1025 (N.D. Ohio E.D. 1998), the court found that the discrepancies between the statement given to the plaintiff when he was not hired, and the statements given under oath created a genuine issue of material fact as to pretext. *Id.* at 1036.

Thus, there can be no doubt that the Tenth and the Sixth Circuits both allow plaintiffs to rebut an employer's proffered, legitimate basis for an employment decision. The Tenth Circuit, on one occasion, strung together adjectives to describe the type of evidence – that which evidences "weaknesses, implausibilities, inconsistencies, incoherencies or contradictions." But the Sixth Circuit has, for at least a

decade, allowed plaintiffs to come forward with the same evidence – any evidence, in fact, that tends to show that the proffered reason "has no basis in fact," "did not actually motivate the decision" or that the "reasons were insufficient to actually motivate the decision."

Even if this Court determined that the Tenth and Sixth Circuit were in conflict, this is not an appropriate case to consider a split in authority because in this case there is no evidence that could demonstrate "weaknesses, implausibilities, inconsistencies, incoherencies or contradictions." As detailed above in Sections I.D.1 to I.D.5, both the District Court and the Sixth Circuit considered each of Petitioner's allegations and found that there was no factual support for each of them; and, even if the allegations were supported by the facts, the allegations did not relate to the decision not to promote Petitioner. For example, Petitioner claimed that CMHA did not follow its policies. Upon review, both lower courts found their was no factual support for that argument. (Pet. App. 12a.) Petitioner claimed that CMHA employees gave contradictory information in their depositions, but the lower courts determined that there was no support for that allegation, and even if there were it only demonstrated "fuzzy memories." (Pet. App. 13a.) Petitioner claimed that CMHA employees provided affidavits that contradict their deposition testimony, but that too was found not supported by the Record. (Pet. App. 14a.)

Petitioner's inability to survive summary judgment in this case does not support an argument that the Tenth and Sixth Circuits are split regarding what types of evidence can be used to call into question an employer's proffered basis for an employment decision. Rather, it merely demonstrates that Petitioner has no evidence to create a genuine issue of material fact on CMHA's proffered legitimate,

nondiscriminatory basis for the decision not to promote Ms. Williams. As such, this case does not warrant review by this Court.

III. This Is Not An Appropriate Case To Consider The Scope of *Desert Palace* Because There Is No Evidence That Petitioner's Gender Was A Motivating Factor In The Employment Decision.

In *Desert Palace Inc., v. Costa,* 539 U.S. 90 (2003), this Court held that circumstantial evidence can be sufficient to prove that unlawful discrimination was a motivating factor in a mixed motives Title VII claim. Petitioner argues that this Court "no longer distinguishes between mixed motive cases and other Title VII cases." (Petition, 10.)

Petitioner's argument is misplaced. *Desert Palace*, by its terms, applies to mixed motive cases – that is, cases where one or more legitimate reasons and an unlawful reason all motivate a decision. Petitioner has never argued that this is a mixed-motives case – and there is no evidence to support an argument that this is a mixed-motives case.

Beyond that, there is no evidence – whether direct or circumstantial – that sex had any bearing on the employment decision. Without any evidence of *any* unlawful motive, this is hardly an appropriate case for this Court to consider the scope of the *Desert Palace* holding.

Regardless, of the three appellate courts to address the impact of *Desert Palace* on the standard for summary judgment, none have adopted the view urged by Petitioner. *See, Estades-Negroni v. Assocs. Corp. of N. Am.*, 345 F.3d 25, 30 (1st Cir. 2003) *vac.* 362 F.3d 874 (1st Cir. 2004);

Stegall v. Citadel Broadcasting Co., 350 F.3d 1061 (9th Cir. 2003) *amend.*, Jan.6. 2004; *Allen v. City Of Pocahontas*, 340 F.3d 551 (8th Cir. 2003). In fact, this case is similar to *Allen v. City Of Pocahontas*, 340 F.3d 551 (8th Cir. 2003), to which this Court recently denied certiorari. *See, Allen v. City of Pocahontas*, *cert. denied* 120 S. Ct. 1420 (mem.). In *Allen*, a terminated housing authority employee alleged age and gender discrimination. When asked whether she was terminated for her gender, Allen testified "I really don't know," and "I can't say for sure." *Allen*, 340 F.3d at 558. Furthermore, like Ms. Williams, Ms. Allen could present no evidence that her gender was a factor in any way in the adverse employment action taken against her. In *Allen*, the District Court affirmed summary judgment for the defendants, as did the Court of Appeals for the Eighth Circuit. As part of her argument to the Eighth Circuit, Allen contended that *Desert Palace* had changed the paradigm set forth in *McDonnell Douglas*. In deciding not to reach the issue, the Eighth Circuit stated: "Here Petitioner has provided no evidence direct or circumstantial, from which a reasonable jury could logically infer that age or gender was a factor in her termination." *Id.*

Similarly, here Petitioner has presented no evidence that could lead a reasonable jury to determine that she was not promoted because of her gender. Instead, like in *Allen*, Petitioner is forced to admit that is merely a "gut feeling." (J.A. 178.) Because there is no evidence – direct or circumstantial – that gender was one of, or the factor, in the decision, this is an inappropriate case for this Court to consider the breadth of the *Desert Palace* holding. Accordingly, review of this case is not warranted.

IV. CONCLUSION

For the foregoing reasons, Respondent Columbus Metropolitan Housing Authority respectfully requests that this Court deny Petitioner Tonya Williams' Petition for Writ of Certiorari.

Respectfully submitted,

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